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NEXTEL

EX PARTE OR LATE FILED

July 22, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

EX PARTE

Re: WT Docket No. 97-82

Dear Mr. Caton:

On behalf of Nextel Communications, Inc. and pursuant to Section 1.1206 of the Federal Communications Commission's Rules, this letter constitutes notice that Bob Foosaner and Larry Krevor met yesterday with Jackie Chorney, Senior Legal Advisor to Chairman Reed E. Hundt, to discuss the above-referenced proceeding. Specifically, they discussed the need for the Commission to enforce its auction rules rather than relieving C Block licensees from their debt obligations. The attached documents also were left with Ms. Chorney.

An original and one copy of this letter have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

Laura L. Holloway
General Attorney

cc: Ms. Jackie Chorney

62. Furthermore, the Industry Proposal provides no method for the Commission to recover a portion of the value of public spectrum pursuant to Section 309(j)(3)(C) of the Communications Act."[140] Instead, incumbent licensees who negotiate expansion rights among themselves could obtain a windfall by obtaining rights to an entire EA without having to pay for such expanded rights. We disagree with commenters who attempt to justify this potential windfall by arguing that the proposed settlement procedure complies with the directive in Section 309(j)(6)(E) for the Commission to avoid mutual exclusivity through "engineering solutions, negotiation, threshold qualifications, service regulations, and other means"[141] Section 309(j)(6)(E) requires us to adopt such methods where we find them to be "in the public interest."[142] We do not believe it is in the public interest to "resolve" the competing claims of incumbents and non-incumbents for spectrum by establishing a settlement mechanism that is limited to incumbents and excluding non-incumbents from the process.

63. The Industry Proposal would also be inconsistent with the approach we have adopted in other services where we have converted from site-by-site licensing to geographic area licensing. In our 900 MHz SMR proceeding and our recent paging proceeding, for example, we adopted similar rules for licensing on a geographic basis while protecting the existing operations of incumbent operators.[143] In neither instance did we give incumbents the unrestricted right to obtain available spectrum through a pre-auction settlement process that excluded non-incumbents. We also rejected this and similar alternatives for the upper 200 channels of the 800 MHz band.[144] For all of these reasons, we conclude that the Industry Proposal would not serve the public interest.

64. While we reject the specific settlement procedure described in the Industry Proposal, we note that many of the positive aspects of the proposal can still be accomplished through the auction process we are establishing for the lower 230 channels. For example, incumbents on these channels are free to enter into partnerships, joint ventures, or consortia for purposes of applying for EA licenses on the lower 230 channels in the areas where they currently operate. Incumbents may also negotiate transfers, swaps, partitioning arrangements, or similar agreements with respect to spectrum that is currently licensed to them. In some instances, taking these steps may result in only one entity applying for a given EA license. Where that occurs, no auction will be necessary because there will be no mutually exclusive applications to resolve. At the same time, providing all parties, incumbents and non-incumbents alike, with the *opportunity* to compete for EA licenses will ensure that the spectrum is awarded to the party that values it the most.

65. We also conclude that while geographic licensing is appropriate for the lower 230 channels, some additional flexibility is appropriate for incumbents on these channels to facilitate modifications and limited expansion of their systems. First, allowing incumbent licensees on the lower 230 channels such flexibility will facilitate the relocation of incumbent licensees on the upper 200 channels. Licensees who are faced with relocation will have a significant incentive to relocate rapidly and voluntarily if they know they will have greater flexibility to modify and expand their systems on the channels to which they are relocating. This will promote our objectives for enabling EA licensees on the upper 200 channels to make

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[140] 47 U.S.C. § 309(j)(3)(C).

[141] 47 U.S.C. § 309(j)(6)(E).

[142] *Id.*

[143] *See 900 MHz Second Report and Order; Paging Second Report and Order.*

[144] *See 800 MHz Report and Order*, 11 FCC Rcd at 1476-1480, ¶¶ 9-14.

86. Finally, APCO argues that we have recognized that public safety agencies need extended implementation because complex government funding mechanisms impede rapid deployment of public safety systems.[150] It argues that extended implementation should be available to public safety systems in the General Category. ITA argues that extended implementation should be available for all private radio licensees in the General Category, because problems such as budgetary constraints affect the I/LT and Business users as much as Public Safety licensees.[151]

87. Discussion. We reject Digital's claim that eliminating extended implementation interferes with legitimate business expectations.[152] First, these licensees have already been given significant time to complete construction. Second, upon adequate rejustification, licensees will have up to two years to complete build out of their systems. Far from being a "drastic change" that will strand investment, as Digital contends, this is an equitable transition to a more efficient method of providing service and using spectrum. Finally, Digital's reliance on the public interest analysis in the *OVS NPRM* is also misplaced. While, the *OVS* proceeding did acknowledge a strong public interest in establishing a level of certainty in business plans, we did not suggest that a licensees' business expectations were entitled to absolute protection, nor did we imply that these expectations would always dictate the course of future regulation.[153]

88. Digital's claim of a property interest in its license is also without merit. Both Section 301 of the Communications Act and relevant case law establish that licensees have no ownership interest in their FCC licenses.[154] Moreover, we do not agree that ending extended implementation will decrease competition. To the contrary, competitive bidding, which allocates resources to those who value them most, is a more efficient and competitive method than our prior rules for licensing spectrum on an extended basis. We also disagree that terminating extended implementation will limit small business participation. To the contrary, we have adopted special provisions, such as bidding credits, in order to assist small businesses at auction.[155]

89. Finally, in response to APCO, we note that we only curtailed extended implementation for SMR licensees.[156] Thus, non-SMR licensees with existing extended implementation grants are not

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[150] APCO Reply to Oppositions to Petitions at 8.

[151] ITA Opposition to Petitions at 4.

[152] Implementation of Section 303 of the Telecommunications Act of 1996 -- Open Video Systems, *Report and Order and Notice of Proposed Rulemaking*, FCC 96-99, at ¶ 25 (March 11, 1996) (hereinafter "OVS NPRM").

[153] *Id.*

[154] 47 U.S.C. § 301. *In re Beach Television Partners, Orix Credit Alliance, Inc. v. Mills*, 38 F3d 535, 536 (11th Cir. 1994)(*citing FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940)); *see also Orange Park Florida T.V. v. FCC*, 811 F2d 664, 674 fn.19 (D.C. Cir. 1987) # ("[A] licensee's interest in a broadcast license...is not a full-fledged, indefeasible property interest").

[155] *800 MHz Report and Order*, 11 FCC Rcd at 1571-1575, ¶¶ 242-250.

[156] APCO Petition at 8.

PCS licensee says keep auction rules

Dear Editor:

In 1993, I resigned from a corporate engineering position to become part of a start-up venture eager to participate in broadband PCS auctions. My wife remembers it well!

After the FCC postponed the May 1994 auction process indefinitely, our company size and investor interest dwindled. Once the A- and B-block auctions got underway with the promise of the C-block auction to immediately follow, we once again found new interest from investors. But the litigation started and the C-block auction was delayed and delayed and delayed. Even so, we survived on consulting revenues and venture capital investments. As late 1995 approached, our company was cautiously optimistic as we finalized a relationship with a large investor who facilitated a down payment of $20 million.

As the auction began, we felt elated that what had been only a dream two years earlier was now coming to fruition. This dream died in round 42 of the C-block auction when our company withdrew due to what we, as well as our investors, believed were outrageously high prices for the licenses being offered. Given what everyone had been through to get to this point in the process, this was a very emotional decision. But, we felt it was the correct one from a business point of view though questions remained. When would other auctions be held? Would our large investors wait for these opportunities? Why was there such a discrepancy in how we valued licenses in our business plans vs. how other bidders, who were continuing to bid, valued them? How would the FCC deal with defaulting bidders?

At the end of the auction process, many of the experienced people who made up our company moved on to other ventures and with them the hopes, dreams and opportunities that appeared so achievable at the start of the auction process came to an end. With our large investor departed, I and a few others remained with the hope that default and the D-E- and F-block auctions would follow quickly. Both did. Our company bid in the C-block reauction with the same results as in the previous auction. As the D-, E- and F-block auctions approached, investors became difficult to find due to the questions surrounding the prices paid for C-block licenses.

With the sole support of our venture capital group, we entered the last PCS broadband auction. Our company was a successful high bidder for four F-block licenses that we believed were good markets at a fair price. We felt somewhat vindicated. We had made a wise business decision to leave the C-block auction and had persevered to win licenses in the F-block. The difference in our F-block license costs and the C-block licenses in our markets was substantial. Investors and vendors alike gave favorable approval to our business plans.

At this point, my story takes what is to me an unbelievable turn. Many of the C-block high bidders are now looking to the FCC for debt restructuring and/or cancellation because the prices they paid for their C-block licenses are preventing them from being financed. Many complain of "market melt down." I believe that the prices paid in the C-block auction actually propagated a depressed market for telecom stocks. Maybe a self-fulfilling prophecy? At the FCC forum on C-block debt restructuring, some top financial people said C-block license winners were fundable at some point during the auction process. Though now, only 14 months later, these same financial investors are stating that the license debt needs to be written down to the tune of 75 to 80 percent. What a drastic change in outlooks! I suspect many of these business plans were never fundable in the first place given the prices paid for the licenses.

It appears though that the FCC is open to some form of debt restructuring even after stating more than once: "We do not want to interfere in the market place." "We guarantee opportunity, not success," "We will go after licensees who default on their auction payments, cancel their licenses and re-auction the affected spectrum." The point I was missing at the FCC forum was the fact I believed that my company made a wise business decision to leave the C-block auction and wait for future opportunities, but if the FCC makes significant changes to the license payments, they will be sending my company a different message. I also hear the financial community stating how important a good management team is to its investment decision, but what I heard stated at the FCC forum is the fact that with a significant license debt restructuring, these financial investors would be willing to invest in these same companies whose management placed what appear to now be "fatal" bids.

To me, the integrity of the auction process is greatly at stake. I always viewed the FCC as having *rules*, not *guidelines* when they formulated their orders for these auctions. Any changes at this late date to the C-block rules would send a message to the industry that the FCC can be had for the right price! The license prices (values) were established by the market when the respective auctions were held. If the FCC intervenes on behalf of the C-block licensees and re-establishes a market value (price) for these licenses, what effect will that have on other broadband PCS licenses and company values? Justice and fairness are hard words to define in our world today, but it seems to me that what the FCC is contemplating is neither. What fairness is there for my company along with approximately 170 others if significant reductions are made to the debt of current C-block licensees? What justice is there in the fact my company, which waited and won F-block licenses, will look significantly different to investors if the C-block licenses debt is restructured?

I am not looking for sympathy because I know there are hundreds of stories similar to mine. What I would like to accomplish with this letter is simply to have all sides of the issue known. Not just the incessant crying of overzealous bidders who have, and continue to make a mockery of the FCC and the PCS industry.

David C. Roberts
AirGate Wireless

Nortel to establish Brazil operations

SAO PAULO, Brazil—Following BellSouth Corp.'s announcement that it has chosen Northern Telecom Inc. to provide infrastructure for its network in Sao Paulo, Brazil, Nortel said it will establish manufacturing operations in Brazil to respond to the enormous growth of the wireless market.

The company said it will manufacture digital wireless telecommunications systems in Campina, Sao Paulo State, with Promon Eletronica, Brazil's leading engineering firm, beginning in the fourth quarter.

Nortel's initial investment will total more than $25 million in manufacturing and $100 million in associated operations, including training and research and development.

The company said it plans to manufacture Time Division Multiple Access and Code Division Multiple Access wireless radio base station equipment. The two technologies are making strong inroads in Latin America.

AD INDEX

ATTACHMENT C TO THE REPLY COMMENTS OF COOK INLET
IN WT DOCKET NO. 97-82

BROADBAND PCS C BLOCK DEBTORS IN BANKRUPTCY

I. OVERVIEW

- A critical aspect of any bankruptcy proceeding regarding "C" block licensees is the dominant position of the FCC. The FCC's status as both the largest secured and unsecured creditor will make it extremely difficult, if not impossible, for the Debtors to confirm any plan of reorganization under the Bankruptcy Code without the FCC's support.

- This dominant position gives the FCC the ability — should it so choose — to assert that it will not compromise its rights to take the licenses, thereby foreclosing any reasonable likelihood of rehabilitation of the debtor.

- As discussed below, the FCC may, among other things, (i) seek relief from the automatic stay in bankruptcy, (ii) seek dismissal of the bankruptcy case, (iii) seek examination of the debtor, (iv) seek conversion of the case to a Chapter 7 liquidation, or (v) seek to obtain quick confirmation of a plan of reorganization on terms favorable to the FCC.

II. RIGHTS OF THE FCC IN A "C" BLOCK DEBTOR'S BANKRUPTCY

A. Relief From the Automatic Stay

1. In accordance with section 362(d) of the Bankruptcy Code, the FCC, as a secured creditor may seek relief from the automatic stay of section 362(a) of the Bankruptcy Code. If granted, such relief would allow the FCC to commence foreclosure proceedings with respect to the PCS Licenses. The basis for such relief would be the continuing depreciation in the value of the licenses, see 11 U.S.C. § 362(d)(1), or alternatively, that the debtor has no equity in the collateral and that the collateral is not necessary for an effective reorganization (because a successful reorganization is unlikely). See 11 U.S.C. § 362(d)(2). See, e.g., In re Hincley, 40 B.R. 679 (D. Utah 1984); see also United Savings Ass'n of Texas v. Timbers of Inwood Forest Assoc., 108 S. Ct. 626 (1988) ("There must be a reasonable

possibility of reorganization within a reasonable time").

2. The Bankruptcy Code also provides that actions to enforce a governmental unit's regulatory powers are not subject to the automatic stay. See 11 U.S.C. § 362(b)(4). Thus, to the extent that exercising its rights with respect to the licenses should be deemed an exercise of its regulatory powers, the FCC could exercise those rights notwithstanding the automatic stay.[1] The exercise of such regulatory powers would be predicated upon failure of a condition of the license — i.e., non-payment of the amounts due as required under the FCC rules. The analysis for considering a cancellation of the PCS Licenses to be an exercise of regulatory power by the FCC would be as follows:

   a. "A license granted to an eligible entity that elects installment payments shall be conditioned upon the full and timely performance of the licensee's obligations under the installment payment plan." 47 C.F.R. § 1.2110(e)(4) (emphasis added).

   b. Because a petition in bankruptcy accelerates all debts as a matter of law, see 11 U.S.C. § 502(b), the licensee would not be in full and timely performance of its payment obligations — except for the FCC's suspension.

   c. If the suspension were lifted, the licensee would not have more than ninety days of delinquency, at which point it must file for grace period relief or else be in default. Section 1.2110(e)(4)(iii) of the FCC's rules provides: "Following expiration of any grace period without successful resumption of payment or upon denial of a grace period

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1. In exercising such regulatory powers a governmental unit may not discriminate against a debtor with respect to its rights as a licensee solely by reason of the debtor's bankrupt status. See 11 U.S.C. § 525(a) ("A governmental unit may not deny, revoke, suspend, or refuse to renew a license . . . [or] discriminate with respect to such a [license] against . . . a person that is or has been a debtor under this Title . . . solely because such bankrupt or debtor is or has been a debtor under this Title").

request, or upon default with no such request submitted, the license will automatically cancel and the Commission will initiate debt collection procedures pursuant to part 1, subpart 0."

d. Under section 362(b)(4) of the Bankruptcy Code, a non-discretionary act of a governmental unit enforcing such governmental unit's regulatory power "does not constitute an administrative action or proceeding against the debtor falling within the purview of section 362(a)(1) of the Bankruptcy Code." In re Gull Air, Inc., 890 F.2d 1255, 1263 (1st Cir. 1989) (treating the automatic withdrawal of aircraft landing slots from the debtor by the FAA). Cf. In the Matter of Fugazy Express, Inc., 114 B.R. 865, 872-74 (Bankr. S.D.N.Y. 1990) (distinguishing Gull Air on basis of discretionary acts by government unit).

B. Dismissal or Conversion of the Debtor's Bankruptcy Case

1. Pursuant to Section 1112(b) of the Bankruptcy Code, the court may, upon the request of a party in interest, for cause, convert a chapter 11 case to a chapter 7 case or dismiss the case outright,[2] whichever is in the best interest of creditors and the estate.

a. Section 1112(b) states that cause includes, among other things, a "continuing loss or diminution of the estate and absence of a reasonable likelihood of rehabilitation" and the "inability to effectuate a plan."

b. Accordingly, the FCC could argue that in light of (i) the continuing depreciation in the value of the licenses, and (ii) the lack of any reasonable chance of success in obtaining confirmation of a plan of reorganization, the continuation of the bankruptcy case is fruitless and a waste of resources and the case should, therefore, be dismissed or converted. See, e.g., In re

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2. If the licenses were to be sold outside of a plan of reorganization, the FCC would be able to "credit bid" against its claim in a reauction of the licenses pursuant to Section 363(k) of the Bankruptcy Code.

Woodbrook Assocs., 19 F.3d 312, 317 (7th Cir. 1994) ("The very purpose of § 1112(b) is to cut short this plan and confirmation process where it is pointless"); In re Humble Place Joint Ventures, 936 F.2d 814, 818 (5th Cir. 1991) (relief granted where "the risk to secured creditors of a continuing chapter 11 case outweighed the benefit").

C. **The FCC Licenses are not Part of the Debtor's Estate**

1. If the FCC licenses are not "property of the debtor's estate," the automatic stay does not apply to them. See 11 U.S.C. § 362(a)(3); In re Gull Air, Inc., 890 F.2d at 1263. The FCC and the courts normally take the position that FCC licenses are not "property" of licensees. See, e.g., Stephens Industries, Inc. v. McClure, 789 F.2d 386, 390 (6th Cir. 1986); In re Tak Communications, Inc. 138 B.R. 568 (Bankr. W.D. Wis. 1992), aff'd 985 F.2d 916 (7th Cir. 1993); In re Smith, 94 B.R. 220, 221 (Bankr. M.D. Ga. 1988); In re Merkley, 94 FCC 2d 829 (1983), recon. den., 56 R.R. 2d 413 (1984), aff'd sub nom. Smith v. Heckler, 776 F.2d 365 (D.C. Cir. 1985). Both the FCC and the courts, particularly bankruptcy courts, have taken differing positions in this issue. See, e.g., In the Matter of Fugazy Express, Inc., 114 B.R. 865 (Bankr. S.D.N.Y. 1990); In re Ridgely Communications, Inc., 139 B.R. 174 (Bankr. D. Md. 1992); In re Bill Welch, 3 FCC Rcd 6502 (1988).

D. **Reclassification and Equitable Subordination**

1. It appears that a number of the entities with the largest claims may have incurred such claims as a result of loans made to the Debtors because the foreign ownership limitations prevented them from making direct capital contributions. It is possible for a court to look past a "loan" label to the substance of the transaction and to reclassify a loan by an individual to a debtor as a contribution of capital instead of a loan creating a claim.

   a. Such a reclassification of claims would be based upon the fact that (i) foreign ownership requirements limited the ability of such entities to participate directly as equity holders and instead such individuals lent funds to the Debtors and may have

received the right to convert such debt to equity in the event foreign ownership restrictions are relaxed; (ii) the Debtors were inadequately capitalized at the time it incurred the debt for the licenses, it is reasonable to assume that a large amount of its debt was simply disguised capital; and (iii) at the time of the advance it was unlikely that a bank would have been willing to lend funds to the Debtors. See, e.g., In re Trimble, 479 F.2d 103 (3d Cir. 1973); In re Interstate Cigar Co., Inc., 182 B.R. 675, 679 (E.D.N.Y. 1995) ("A significant test for capital contributions is whether a disinterested lender would have made such loans at the same time").

2. It is also possible for a court to equitably subordinate a creditor if it engaged in some type of inequitable conduct that resulted in injury to the other creditors.

   a. Factors that could result in equitable subordination of certain creditors include, among other things, violation of foreign ownership limitations (for example, as discussed above, if foreign "creditors" were brought in as lenders solely to get around the legal limitations regarding foreign ownership), and allowing the company to incur debts that it clearly could not repay (see discussion below).

E. Piercing the Corporate Veil and/or Fraud

1. Courts are often willing to pierce the corporate veil if, among other reasons, a business is formed or operated with capital inadequate to meet the expected business obligations. See, e.g., U.S. v. WRW Corp., 986 F.2d 138 (6th Cir. 1992); Carpentry Health & Welfare Fund of Philadelphia and Vicinity by Grey V. Kenneth R. Ambrose, Inc. 717 F.2d 279 (3d Cir. 1983). Considering the Debtors' thin capitalization, the creditors may be able to pierce the corporate veil and reach the assets of the Debtors' equity owners. The bankruptcy court would probably look to the law of the situs of the bankrupt corporation or of the court.

2. If the Debtors committed any fraud in connection with obtaining the licenses, including representations made with respect to its financial

condition and bidding eligibility, the FCC would likely be able to revoke its licenses. In addition, Title 18 criminal sanctions may also be applicable.

F. Examinations

1. The Bankruptcy Code allows for the appointments of examiners and Bankruptcy Rule 2004 allows examinations, both of which can be used to, among other things, investigate the presence and merit of actions of the type discussed above.

2. Section 1104 of the Bankruptcy Code provides that upon request of a party in interest, the court shall appoint an examiner if such appointment is in the interest of creditors or for other cause. An examiner, once appointed, would investigate the debtor, its management and equity holders, to determine if, among other things, claims of the type described above exist.

3. Bankruptcy Rule 2004 allows for an examination of any entity. The scope of the examination may be broad in that it may extend to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or any matter which may affect the administration of the debtor's estate . . . ."

G. Propose Chapter 11 Plan

1. Another option would be for the FCC to propose, or jointly propose with other creditors or the creditors' committee, a chapter 11 plan which would transfer the licenses to a satisfactory third party (or even possibly the FCC).

   a. The FCC would have to locate a third party willing to purchase the Debtors or all of their assets (in theory, the FCC could also serve as this party).

   b. The FCC could seek to terminate the debtor's "exclusivity period"[3] pursuant to section 1121(d) of the Bankruptcy Code to permit it to file a plan immediately.

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[3] The "exclusivity period" is the 120 day time frame within which only the debtor may file a plan of reorganization. This period may be reduced or extended by the court for cause.

c. Once exclusivity is terminated, the FCC can file a Chapter 11 plan of reorganization which would detail the transfer of the debtor's assets to the third party purchaser and the proposed method of satisfying all outstanding debts.

   i. The number and amount of claims may be significantly reduced if some of the larger creditors are reclassified as equity or equitably subordinated as discussed above.

   ii. Creditors may be willing to take a relatively small distribution in respect of their claims considering the amount of the unsecured debt and the Debtors' prospects of confirming a plan.

   iii. It is possible that equipment vendors and other contracting parties will be willing to take a minimal distribution on their claims if the purchaser were to continue to use their services or products.

C BLOCK DEBT RELIEF

1. THESE ARE NOT "DESIGNATED ENTITIES" -- EITHER IN LAW OR IN SPIRIT.

- in the 1993 Budget Act, Congress required that the FCC ensure that small businesses, and women and minority-owned businesses, are given an opportunity to participate in the provision of spectrum-based services.

- the C Block licensees seeking relief, however, in most cases are nothing more than shams/fronts/speculators/opportunists who saw a potential to make a buck at the expense of: (a) legitimate small businesses and (2) now, the American taxpayer.

- they are requesting "corporate welfare" for huge foreign companies such as Sony, Hyundai, and Pohang Steel, as well as for the soon-to-be British Telecom-owned corporate giant, MCI ("Concert"), which has continued its search for a shortcut into the wireless telecommunications marketplace.

- the majority of this corporate welfare would go to only two companies -- Nextwave and General Wireless -- who concocted these multi-national multi billion dollar "small businesses," bid outrageous sums of money, and now want FCC relief from their misguided business schemes.

2. THE COMPETITIVE MARKETPLACE

- competition has been the mantra of Congress and the FCC for the past four years.

  - in any competitive endeavor, there are winners and losers; however, it is anything but a competitive marketplace when the FCC charges to the rescue at the first sign of a high-profile loser.

  - besides the fact that this marketplace interference is unwarranted in a competitive industry, it is illegal under the FCC's statutory mandate -- to protect competition, not competitors.

- the financial straits of certain C Block licensees is not the FCC's responsibility -- the FCC did not force them to bid well beyond the winning bids for the larger A and B Block licenses, or to keep bidding after responsible bidders dropped out; the FCC cannot allow responsibility to be shifted from its rightful owner: the C Block

licensees.

3. **THE AUCTION PROCESS WILL LOSE ALL CREDIBILITY.**

- granting this relief will eradicate the FCC's credibility and the integrity of competitive bidding as a licensing methodology.

- as both a creditor and a regulator, the FCC will have no credibility with the industry or the investment community: as a creditor, will find it difficult to enforce the terms of its payment plans; and as a regulator, will not be able to enforce its auction rules in the future -- why follow them if you have precedent to support eliminating them in "times of trouble"?

- future bidders will be encouraged to submit undisciplined bids without regard for the FCC's payment rules -- "Nextwave did it, there's legal precedent to support it . . . so others can surely do it too."

4. **C BLOCK RELIEF IS BLATANT DISCRIMINATION AGAINST EVERY OTHER WIRELESS CARRIER.**

- Congress mandated regulatory parity for all Commercial Mobile Radio Services -- forgiving part of or compromising the winning C Block bids while requiring other winners to pay in full, blatantly discriminates against carriers that follow the rules. It would provide a significant financial advantage to those who no longer have to pay much, if anything under some proposals, for their FCC license.

5. **LAWSUITS AND DELAYS.**

- There will be lawsuits whatever the FCC decides. The FCC's position will be defensible if it <u>enforces</u> its rules as written, reconsidered and upheld on appeal, rather than arbitrarily enforcing them only on those parties who chose to follow them.

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